

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D24213  
G/kmg

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Submitted - December 12, 2008

ANITA R. FLORIO, J.P.  
JOSEPH COVELLO  
RUTH C. BALKIN  
JOHN M. LEVENTHAL, JJ.

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2007-06852

DECISION & ORDER

The People, etc., respondent,  
v Maurice Simpson, appellant.

(Ind. No. 6629/00)

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Lynn W. L. Fahey, New York, N.Y. (David P. Greenberg of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Solomon Neubort, and Marie-Claude P. Wrenn-Myers of counsel), for respondent.

Appeal by the defendant from a resentence of the Supreme Court, Kings County (Dowling, J.), imposed June 18, 2007, upon his conviction of burglary in the second degree and theft of services, upon a jury verdict.

ORDERED that the resentence is affirmed.

The defendant was convicted, after a jury trial, of burglary in the second degree and theft of services, and was sentenced as a second violent felony offender to a determinate term of imprisonment of 15 years. Upon the defendant's pro se motion, the court ordered that the defendant be resentenced because it failed, at the original sentencing proceeding, to pronounce the mandatory five-year period of post release supervision (hereinafter PRS).

Contrary to the defendant's contention, the resentencing court was not required to exercise its discretion to consider whether the sentence as a whole was appropriate in view of the fact that the sentence would now include a period of PRS. At the resentencing proceeding, the court stated that, at the time it imposed the original sentence, it believed that if it did not pronounce a period of PRS, then it was understood that the maximum period of PRS would be imposed. Thus,

August 11, 2009

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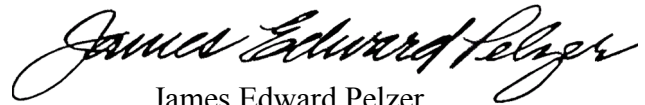
PEOPLE v SIMPSON, MAURICE

the sentencing court clearly was aware that the defendant would be serving a period of PRS upon his release from prison (*cf. People v Stewartson*, 63 AD3d 966).

Accordingly, the resentencing court properly declined to reconsider the imprisonment component of the defendant's sentence.

FLORIO, J.P., COVELLO, BALKIN and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court